UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 11-10466-RGS

MICHAEL TERSIGNI

v.

WYETH-AYERST PHARMACEUTICALS, INC., et al.

MEMORANDUM AND ORDER ON PLAINTIFF'S MOTION FOR TELEPHONIC CONFERENCE RE: TRIAL TIME LIMITS

February 28, 2014

STEARNS, D.J.

This memorandum is a response to plaintiff Michael Tersigni's February 24, 2014 motion for a telephonic conference to voice his objection to the court's decision to impose a sixteen hour limit on each side's presentation in this product liability case. The court will provide a formal explanation of the imposition of time limits and deny the motion.

Fed. R. Civ. P. 1 states that the civil rules "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding." The Federal Rules of Evidence further direct trial judges to "exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to . . . avoid wasting time." Fed. R. Evid. 611(a)(2). *See also In re City of Bridgeport*, 128 B.R. 589, 591 (Bankr. D. Conn. 1991) (construing Rule 611 as mandate to avoid

"the needless consumption of time"). Aside from the practicalities involved, there is an equitable consideration as well: "The Court has obligations to other parties who have cases to be heard." *SCM Corp. v. Xerox Corp.*, 77 F.R.D. 10, 14 (D. Conn. 1977), (quoting *United States v. United Shoe Mach. Corp.*, 93 F.Supp. 190, 191 (D. Mass. 1950)).

Imposing firm limits on the length of a trial is one of the most important ways a court can ensure a "just, speedy, and inexpensive" determination, while also providing a "device for improving jury comprehension." William W. Schwarzer, *Reforming Jury Trials,* 132 F.R.D. 575, 578 (1991). In recognition these salutary ends, "there is a 'long line of cases making clear the authority of district judges to impose reasonable time limitations on trials.'" *Friedline v. New York City Dep't of Educ.*, 2009 WL 37828, *2 (S.D.N.Y. 2009), *aff'd*, 376 Fed. Appx. 82 (2d Cir. 2010). *See also United States v. Reaves,* 636 F.Supp 1575 (E.D.Ky 1986) (holding that a district court "has the power to impose reasonable time limits on the trial of both civil and criminal cases in the exercise of its reasonable discretion" to achieve the goals of preserving "the court's resources" and "the traditional autonomy of counsel to present their own case"); *Navellier v. Sletten*, 262 F.3d 923, 941 (9th Cir. 2001) ("Trial courts have broad authority to impose reasonable time limits.").

The court initially assumed that a trial in this matter would require but one week, given that the case involves only two parties, and the claim to be tried is relatively straightforward: a failure to warn of a drug's potential side effects and the attendant issue of specific causation. The court also considered the fact that this case, as one of many consolidated by the Multi-District Litigation Panel, has been well rehearsed over time in numerous prior cases and judicial opinions.

After the parties filed a motion to continue the trial,[1] and at the court's request, an estimate of the length of their respective presentations, the court postponed the trial until July of 2014 (as plaintiff requested) and expanded the time allotted for trial to two weeks. The court also allocated each side a total of sixteen hours to present their respective cases, inclusive of direct examination and the cross examination of opposing witnesses, but exclusive of jury selection and closing arguments.

Tersigni objects to the sixteen-hour time limit, arguing that his trial counsel "cannot meet their burden of proof under the present time limitations set by this Court," noting "Wyeth's drug Pondimin was FDA

[1] The parties indicated that they needed more time prior to trial to, among other things, (1) conduct discovery related to damages, (2) brief some forty motions in limine, (3) prepare exhibit lists (with 'thousands' of exhibits), and (4) to designate deposition testimony.

approved in 1973. Fenphen was first conceived in the early 1980's. Pondimin was finally withdrawn from the market in 1997. This involves decades of information simply addressing the regulatory history without explaining any of the science." Pl.'s Mem. (Dkt. #87), at 1-2.

As an initial matter, the court sees no reason to subject a jury to testimony about "decades" of "regulatory history." Almost all of the regulatory issues that are relevant are matters of public record and can, and should, be stipulated. As any number of seasoned trial judges have cautioned, "there are limits to the amount of factual material any trier, whether judge or jury, can realistically be expected to absorb and assess," and "a profusion of data threatens to impede their orderly and fair decision-making." *SCM Corp.,* 77 F.R.D. at 15. *See also* S.E.C. *v. Koenig*, 557 F.3d 736, 740 (7th Cir. 2009) ("[T]he longer the trial goes, the more the jury forgets and the less accurate the decision becomes."). Time limits also reward those who object to them most: they offer "considerable benefits . . . [including] require[ing] counsel to exercise a discipline of economy choosing between what is important and what is less so." *Reaves,* 636 F. Supp. at 1580 (quoting Hon. Pierre N. Leval, *From the Bench: Westmoreland v. CBS*, Litigation, Vol. 12, No. 1, at 8 (Fall 1985)).

In the court's experience, trial counsel habitually overestimate the time required to effectively present a witness, particularly on direct examination. In reviewing Tersigni's witness-by-witness recapitulation of his estimate of the trial time required, the court finds it inconceivable that the testimony of his daughter, brother, and mother[2] would consume three hours of jury time, while the thought that a single expert (Dr. Blume) would testify for 20 and one-half hours borders on abuse of the jury (not to mention the witness herself). Tersigni also insists that he needs extra time to accommodate "selecting a jury, openings, closings, objections and extensive legal arguments." Dkt. #82-1, at 2. In twenty years of experience with civil trials, it has never taken the court longer than an hour and fifteen minutes to empanel a civil jury of eight members. Moreover, there will be no time lost during trial on extensive legal arguments because the court does not permit the trial to be interrupted by so-called "side-bar" conferences. All legal arguments will be resolved prior to trial by way of motions in limine, or if necessary during trial, before or after the jury's day begins or ends.

[2] Is there any experienced counsel who would undertake a grueling cross-examination of a plaintiff's mother?

Finally, the court is not persuaded that a hearing on this issue is necessary. The court will, however, allot each party an additional two hours of trial time for a total of eighteen hours for each side.

ORDER

Plaintiffs' motion for a "telephonic conference re: trial time limits" is DENIED.

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE